

Update: Criminal Procedure Monograph 6--Pretrial Motions

6.15 Motion for Compulsory Process of a Defense Witness or Appointment of an Expert Witness at Public Expense

Insert the following language after the second full paragraph on page 23:

Where the defendant satisfied the mandate of *Ake v Oklahoma*, 470 US 68, 83 (1985), by providing the trial court with specific facts in support of the assertion that his sanity was “likely to be a significant factor at trial,” the court erred in denying the defendant’s request for independent expert psychiatric assistance at trial. *Powell v Collins*, ___ F3d ___, ___ (CA 6, 2003). However, the Sixth Circuit found the trial court’s error constitutionally harmless as it concerned the guilt phase of the defendant’s trial, because an independent psychiatrist could not have changed the fact that the defendant admitted he kidnapped the victim, intended to rape her, and caused her ultimate death. *Powell, supra*, ___ F3d at ___. According to the Sixth Circuit, the trial court’s refusal to appoint an independent psychiatric expert to assist the defendant during the penalty phase in a capital case was reversible error. In *Powell*, the Court held that an indigent defendant’s constitutional right to expert psychiatric assistance was not satisfied—at either the guilt or the penalty phases—by the trial court’s appointment of a “neutral” clinician available to both parties. *Powell, supra*, ___ F3d at ___.